

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

FEB 14 1997

In the Matter of	)	
	)	
Southwestern Bell Telephone Company	)	Transmittal No. 2524
Revisions to Tariff F.C.C. No. 73	)	
	)	CC Docket No. 94-97, Phase II
Rates, Terms, and Conditions for Expanded	)	
Interconnection Through Virtual Collocation	)	
for Special Access and Switched Transport	)	

**OPPOSITION TO DIRECT CASE**

Time Warner Communications Holdings, Inc. ("TWComm"), by its attorneys, hereby submits its Opposition to the Supplemental Direct Case filed by Southwestern Bell Telephone Company ("SWBT"), pursuant to the Bureau's Supplemental Designation Order in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

In its Supplemental Designation Order, the Common Carrier Bureau identified several additional issues, with respect to the rates, terms, and conditions applicable to SWBT's offering of virtual collocation services to TWComm and other competing local service providers, which were not

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<sup>1</sup> Supplemental Designation Order, In the Matter of Southwestern Bell Telephone Company Revisions to Tariff F.C.C. No. 73; Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, DA 96-158, (C.C.B., released January 24, 1997).

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addressed in the Bureau's September 1995 Phase II Designation Order.<sup>2</sup> The new issues identified by the Bureau relate to tariff revisions proposed by SWBT on December 14, 1995, which address SWBT's policy for dealing with situations in which SWBT personnel make a determination that interconnector-designated equipment has "failed" and cannot be repaired, but must instead be replaced by SWBT, at the interconnector's expense.

SWBT's response to the issues designated by the Commission provides further confirmation of SWBT's already well-established commitment to use every means available to use its control of essential network facilities to raise its rivals' costs and otherwise impair the ability of would-be competitors to obtain the facilities and related services they need on reasonable terms and conditions. As the Commission has acknowledged, "the most expensive rate element in virtual collocation offerings is likely to be for equipment dedicated to the use of interconnectors" (*i.e.*, interconnector designated equipment or IDE).<sup>3</sup> Yet SWBT alone of all the incumbent LECs whose tariffs are the subject of this investigation continues to refuse to enter into \$1 sale/repurchase arrangements which would make it possible for interconnectors to control the substantial costs associated with the purchase, repair, and replacement of IDE dedicated to their use. As a result, TWComm and other would-be competitors remain highly vulnerable to strategic behavior by SWBT

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<sup>2</sup> See Phase II Designation Order, Local Exchange Carrier's Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase II, 10 FCC Rcd 11116 (C.C.B. 1995).

<sup>3</sup> Supplemental Designation Order, Paragraph 5, citing Expanded Interconnection With Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154, 5188 (1994) ("Virtual Collocation Order").

which is designed to artificially inflate the already substantial costs associated with the installation, maintenance, repair, and replacement of their competitors' IDE.

As the Bureau has observed, under SWBT's virtual collocation tariff, interconnectors pay nonrecurring charges that force them to absorb the "full cost" of IDE (as SWBT calculates it),<sup>4</sup> while SWBT retains title to the equipment.<sup>5</sup> In its Supplemental Designation Order, the Bureau expresses concern that "SWB may have an incentive to increase interconnectors' costs of providing service to their customers by replacing equipment that has 'failed' in cases where it would be more efficient to repair such equipment."<sup>6</sup> As the discussion below indicates, the responses provided in SWBT's Supplemental Direct Case fail to provide any assurance that behavior of this sort (or other strategic behavior designed to impose added costs on would-be competitors) will not occur. To the contrary, SWBT's responses only serve to underscore the vulnerability of interconnectors to such tactics. The \$1 sale/repurchase option represents the most effective means of addressing these concerns, and TWComm urges the Commission to require SWBT to revise its VEIS tariff to make this option available to interconnectors.<sup>7</sup> Should the Commission decline to take this step, TWComm

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<sup>4</sup> As TWComm and others have previously observed, the VEIS rate levels and structure adopted by SWBT impose grossly excessive, unjustified costs on interconnectors seeking to compete with SWBT. See TWComm Comments on Direct Cases, CC Docket No. 94-97, Phase II (filed November 9, 1995).

<sup>5</sup> Supplemental Designation Order, Paragraph 9.

<sup>6</sup> Id.

<sup>7</sup> While the Commission's authority to mandate the availability of arrangements of this sort may have been uncertain at the time the current VEIS rules were adopted, the Communications Act now explicitly requires physical collocation, except where such arrangements are not practical for technical reasons or because of space limitations, pursuant to the requirements of Section 251(c)(6) of the Act, as amended. 47 U.S.C. § 251(c)(6). The Commission's authority to prescribe rules requiring LECs to provide physical collocation would appear necessarily to

urges the Commission, at a minimum, to require SWBT to take the alternative steps described herein, which are designed to help constrain, to the extent possible, SWBT's ability to impose repair and/or replacement costs on TWComm and other interconnector competitors of SWBT. TWComm's specific proposals and comments in response to SWBT's Supplemental Direct Case are as follows:

## **II. SWBT IDE REPAIR/REPLACEMENT PRACTICES**

In its Supplemental Direct Case, SWBT describes the procedures and methodology which its personnel purportedly use to determine whether equipment generating a trouble alarm can be repaired in place and, once a determination is made that the equipment has "failed," whether the equipment is to be repaired or replaced. Even assuming arguendo that the prescribed procedures provide SWBT's technicians no discretion whatsoever in making repair/replacement determinations, it is up to the responsible personnel to faithfully follow the prescribed procedures and methodologies and resist the temptation to manipulate the situation to their employer's advantage. SWBT asserts that the "procedures and methodologies described herein" (which are not identified, except in the most general terms) "are employed indiscriminately to all central office equipment, including IDE."<sup>8</sup> However, even if SWBT's technical manual calls for use of the same procedures and methodologies for IDE and SWBT central office equipment, the responsible personnel can always choose to ignore or apply the prescribed procedures in a discriminatory manner.

SWBT attempts to suggest, in a highly-qualified way, that such discrimination cannot occur because the identification of particular equipment as IDE, rather than SWBT equipment, "is not

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encompass authority to direct that arrangements of the sort described herein be made available.

<sup>8</sup> Supplemental Direct Case at 2.

readily apparent to the technicians by a visual inspection of the equipment."<sup>9</sup> While this particular statement may be accurate, it is TWComm's experience that when trouble tickets are generated, the equipment location, Common Language Location Identifier ("CLLI") codes, and ring identifications are identified. As a result, the SWBT technician will know the identity of the particular provider whose equipment is interconnected.<sup>10</sup>

The only effective means of preventing LEC manipulation in the maintenance/repair/replacement of IDE is the \$1 repair/repurchase option. In instances where TWComm has such arrangements, issues of this sort become moot, since TWComm retains effective control over repair/replacement decisions and the associated costs.<sup>11</sup> To the extent that SWBT is allowed to continue its refusal to enter into \$1 sale/repurchase arrangements, TWComm urges the Commission, at a minimum, to require SWBT to maintain an inventory system, similar to that employed by TWComm, which allows TWComm and other interconnectors to track installed IDE, the use of replacement spares, etc. In addition, SWBT should be required to provide interconnectors

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<sup>9</sup> Id.

<sup>10</sup> In addition, the interconnector has to be identified so that estimates of time to restore can be given to the right party's network operations center and tracked for escalation purposes. Moreover, in the event of a fault/failure, the Alarm Collection Device ("ACD"), which SWBT requires all interconnectors to purchase, will identify which system is experiencing a problem.

<sup>11</sup> Where the \$1 sale/repurchase option is in use, all of the relevant equipment is identified in TWComm's equipment inventory database. When a LEC technician determines that TWComm's equipment has "failed," the technician first replaces the defective element with a "spare" element provided by TWComm and restores the equipment. The technician then provides TWComm with specific details concerning the particular element (e.g., a circuit pack) that caused the equipment failure. Following its receipt of the technician's report, TWComm provides the LEC with a replacement "spare" from its own inventory. At this point, TWComm decides whether the failed element should be repaired or replaced and determines whether the equipment is covered by a manufacturer's warranty.

with regular inventory reports and allow periodic audits to ensure that the IDE database is being properly administered.

### **III. SALVAGE OF REPLACED IDE**

In its Supplemental Designation Order, the Bureau has raised the issue of whether, "[i]n light of SWB's imposition of a nonrecurring charge to cover the full cost of IDE," interconnectors "should be entitled to the salvage value of IDE in the event that equipment that 'fails' is retired."<sup>12</sup> In response, SWBT asserts that notwithstanding the fact that the interconnector has been forced to incur nonrecurring charges based on SWBT's highly inflated "full cost" figures, the interconnector "has no equitable or legal right to, nor any interest in the salvage value of the failed IDE."<sup>13</sup>

SWBT goes on to argue against any allowance for salvage value, asserting that the costs associated with removal and disposal of the failed IDE "could exceed the scrap value, if any," and stating that it has "encountered situations of this nature in the disposal of central office equipment. . . ."<sup>14</sup> However, in TWComm's experience, the cost associated with the removal and disposal of the SONET (OC3 and OC12) equipment which TWComm utilizes is minuscule in relation to the salvage value of such equipment.<sup>15</sup> Clearly, where the salvage value of the equipment in

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<sup>12</sup> Supplemental Designation Order , Paragraph 10.

<sup>13</sup> Supplemental Direct Case at 3.

<sup>14</sup> Id. [Emphasis added]

<sup>15</sup> SWBT's submission does not indicate how it determines the salvage value of "failed" IDE.

question is likely to significantly exceed any associated costs, SWBT has increased incentive to replace and retire (rather than repair) such equipment.

The availability of a \$1 sale/repurchase option is, once again, the only fully effective means of addressing the risk that SWBT will make IDE repair/replacement decisions that are designed to unjustly enrich itself, at the expense of its interconnector-competitor. At a minimum, SWBT should be required to refund to the interconnector any salvage value associated with retired IDE, as determined by an independent appraiser, which exceeds the reasonable costs of removal (to the extent such costs are not already covered by SWBT's grossly excessive nonrecurring charges).

#### **IV. NOTIFICATION OF WARRANTY PERIODS**

SWBT asserts that it is unnecessary to "inform interconnectors of the warranty period normally associated with the particular IDE," because the interconnector presumably has "shopped-out" the equipment and is "already familiar with the warranty offered by the manufacturer."<sup>16</sup> However, SWBT then goes on to acknowledge that its warranty period may be "different" from the standard warranty period (presumably longer) as a result of negotiations between SWBT and its vendor.<sup>17</sup> In light of this possibility, it clearly is necessary for SWBT to inform interconnectors, upon request, of the applicable warranty period and other relevant details, in order to enable them to "plan ahead for possible out-of-warranty expenses."<sup>18</sup> Accordingly, TWComm urges the Commission, to the extent it does not direct SWBT to make the \$1 sale/repurchase option (which would render this

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<sup>16</sup> Supplemental Direct Case at 3.

<sup>17</sup> Id.

<sup>18</sup> Supplemental Designation Order, Paragraph 10.

issue moot) available, to order SWBT to provide in its tariff for disclosure of the applicable warranty periods and identification of the relevant manufacturer's representative, upon request by an interconnector.<sup>19</sup>

## **V. RECOVERY OF IDE REPAIR COSTS**

SWBT's Supplemental Direct Case states that "repair costs for IDE are included in the maintenance costs developed in the cost study process" and are recovered entirely through recurring charges for IDE.<sup>20</sup> As it has in the past, SWBT once again has submitted its cost support data on a confidential basis,<sup>21</sup> thereby depriving TWComm of the opportunity to assess whether the repair costs imposed on it are justified. In this area as well, the availability of a \$1 sale/repurchase option would render debates over the validity of SWBT's repair costs for IDE unnecessary and would eliminate SWBT's ability to raise its rivals' costs in this manner. Given SWBT's continued refusal to adopt such an option, the Commission should take immediate action to make the cost studies offered in support of SWBT's tariffed rates available for review by interconnectors.<sup>22</sup> In addition, to the extent

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<sup>19</sup> If warranty information is deemed proprietary or confidential, disclosure could be conditioned on the execution of an appropriate non-disclosure agreement, to the extent the disclosure falls outside the scope of the interconnector's existing non-disclosure agreement with SWBT.

<sup>20</sup> Supplemental Direct Case at 4.

<sup>21</sup> See Letter from Darryl W. Howard, SWBT, to William F. Caton, Acting Secretary, FCC (February 7, 1997) requesting confidential treatment of cost support data submitted in response to the Supplemental Designation Order.

<sup>22</sup> The Commission previously granted in part requests by TWComm and other interested parties seeking access to cost support data submitted by SWBT in this proceeding, and directed that such information be made available pursuant to a protective order. See Letter from Kathleen M. H. Wallman, Chief, Common Carrier Bureau to John L. McGrew (released June 16, 1995) regarding FOIA Request Control No. 95-211. However, as a result of SWBT's pending Application for Review of the Bureau's initial November 1, 1994 letter ruling granting



that interconnectors are currently deprived of the opportunity to provide meaningful input on such issues, it is all the more important that the Commission staff give close, critical scrutiny to the cost data submitted by SWBT in response to the Bureau's Supplemental Designation Order.

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requests by other CLECs for access to SWBT's VEIS cost support data, SWBT has managed to avoid any disclosure of this data for more than two years. See SWBT Application for Review of November 1, 1994 letter ruling regarding FOIA Control Nos. 94-310, 325, 328 (filed November 16, 1994).

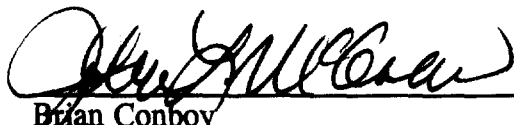
## CONCLUSION

TWComm urges the Commission to take prompt action to address the clear deficiencies in SWBT's response to the issues identified in the Bureau's Supplemental Designation Order, as well as the defects in SWBT's previous filings identified in TWComm's earlier submissions in this investigation. Most, if not all, of these deficiencies can be readily addressed through the use of a \$1 sale/repurchase arrangement. To the extent such arrangements are not made available by SWBT, voluntarily or pursuant to a Commission order, TWComm urges the Commission to adopt the alternative measures described herein.

Respectfully submitted,

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February 14, 1997

## **CERTIFICATE OF SERVICE**

I, Rosalyn Bethke, do hereby certify that on this 14th day of February, 1997, copies of the foregoing "Opposition to Direct Case" by Time Warner Communications Holdings, Inc. were delivered by first class mail, unless otherwise indicated, to the following parties:

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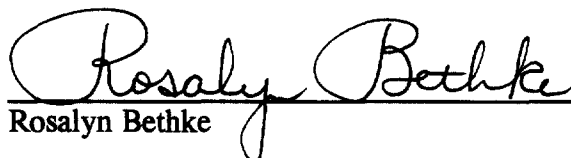
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